National Association of
NAB
BROADCASTERS®

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The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Chairman:

As the Commission approaches its next review of the broadcast ownership rules, NAB wants to emphasize the importance of reforming these broadcast-only restrictions that impair local broadcasters' ability to compete in a digital, multichannel marketplace. In particular, NAB supports your recognition of the need to reform the prohibition on owning a newspaper and even a single broadcast outlet in the same market. NAB also stresses the urgent need for reform of the local television ownership rule to allow duopolies, especially in medium and small markets where local broadcasters are facing severe financial pressures. The NAB Board of Directors has long endorsed these efforts to liberalize the cross-ownership and duopoly restrictions, and we look forward to working with you on these and all other issues raised in the upcoming ownership review.

<u>The Complete Prohibition on Newspaper/Broadcast Cross-Ownership Is Anachronistic</u>.

NAB fully supports your calls for reforming the outmoded cross-ownership prohibitions. As you have correctly noted, unlike every other one of the broadcast ownership restrictions, the newspaper/broadcast cross-ownership ban remains unchanged since its adoption in the 1970s. In 2004, moreover, the Third Circuit Court of Appeals -- while overturning the Commission's specific new cross-ownership limits -- did uphold the Commission's decision not to retain the complete prohibition on newspaper/broadcast cross-ownership. In doing so, the Court agreed that newspaper/broadcast combinations can promote localism and that newer media, including cable and the Internet, do contribute to diversity in local markets. Unfortunately, the FCC's decision repealing the cross-ownership prohibition never became effective due to the Court's overturning of the new numerical cross-ownership limits, so broadcasters still remain subject to a ban the Commission has already found unwarranted. NAB hopes to work with you in reforming the cross-ownership rule so as to find the appropriate and judicially sustainable balance between localism, diversity and competition.

NAB believes that the Commission correctly concluded in its last ownership review that the complete prohibition on newspaper/broadcast combinations was no longer justified. The cross-ownership prohibition has inhibited the development of new innovative media services, especially digital and on-line services that have features of both the electronic and print media. The ban also precluded struggling newspaper and broadcast entities, including those in medium and small markets, from joining together to improve, or at least maintain, existing local news operations. After all, broadcast television is not the only traditional medium facing significant financial pressures in the digital environment. Numerous reports have documented continuing and serious declines in newspaper circulation, reductions in newspaper revenues, and cuts in jobs at even major market newspapers. A number of studies have shown consistent declines in newspaper readership, especially among younger consumers who frequently use other media (especially the Internet) to obtain news and information. Several studies have further indicated that television stations co-owned with daily newspapers excel in providing certain types of programming, including local news and other locally-oriented programming.

Like the television duopoly rule, the cross-ownership restriction inhibits broadcasters from competing vigorously with their multichannel competitors in local markets. For example, the cross-ownership rule prohibits the owner of a single radio station from having an attributable interest in a daily newspaper in the same market, while a cable system operator with a dominant position in the local multichannel video programming distribution market faces no restriction in acquiring a daily newspaper in the same market. Similarly, a cable system operator – who controls the distribution of dozens or even hundreds of video programming channels, as well as an essential pathway into consumers' homes – can acquire a broadcast television station in the same market, unlike the owner of a single broadcast television station who cannot acquire a second broadcast channel in most markets. Certainly in the current digital, multichannel marketplace, local broadcasters are unable to dominate either the advertising market or the marketplace of ideas. Thus, maintaining broadcast-only local ownership rules in their current form can no longer be justified.

<u>Reform of the Television Duopoly Rule Is Urgently Needed</u>.

Several factors have combined to place unprecedented financial pressures on television broadcasters today, especially those in smaller markets. The costs of the digital television (DTV) transition are substantial for all broadcasters, but are overwhelming for many medium and small market stations. Local broadcasters are also facing a significant decline in overall revenues as the result of the reduction or even the elimination of network compensation payments to affiliated stations. Indeed, in some cases the traditional compensation payments have been reversed, with local affiliates now paying networks for the network programming. Stations in smaller markets, which have much thinner profit margins than stations in larger markets, are disproportionately affected by these reductions in network compensation.

Perhaps most significantly, local television broadcasters are bearing the expense of the DTV transition and the loss of network compensation at the same time they are facing ever-increasing competition from cable and Direct Broadcast Satellite for audiences and national and local advertising revenue. NAB stresses that these pressures on local station finances will only continue in the future with new forms of competition in the video marketplace. For example, video content is already being offered via the Internet, mobile phones and the iPod.

These three factors – the costs of the digital transition, changes in network compensation, and increased competition – have combined to create a challenging competitive environment for local stations in medium and small markets. As NAB has shown in past studies, network affiliated stations in medium and small markets have experienced declining profitability in recent years, with many lower-rated network affiliates in these markets suffering actual losses.

We continue to be concerned that the financial pressures on stations in medium and small markets (especially lower-rated ones) are sufficiently severe to call into question their continued viability as independent operations. At the very least, these financial pressures threaten the viability of important viewer services, such as local news operations that are increasingly expensive to maintain. A significant number of television stations in recent years have already reduced or eliminated their local news operations due to financial difficulties. Clearly, localism and diversity cannot be served by restrictions that doom local broadcasters to ownership arrangements no longer economically viable in today's highly competitive media marketplace.

As examinations of existing television duopolies, local marketing agreements and joint sales agreements have shown, these same market combinations – beyond merely preserving existing news operations – can also improve news operations and can lead to the initiation of local news services at stations formerly without any locally produced news. All these same-market combinations have enabled stations to increase viewership by improving a variety of programming services, including local news, sports, weather, specials, and programming focusing on minority communities. In Norfolk, Virginia, for example, combining with a stronger station in the same market enabled a technically deficient home shopping station to be transformed into a major network affiliate with a local news operation that is transmitting in digital. As the Commission recognized in 2003, same market combinations can enhance localism and diversity by increasing the amount of news and local programming at the combining stations, and by making local television broadcasters more competitive with other video delivery systems.

In light of these benefits to both financially struggling broadcasters and viewers, NAB emphasizes the need to allow television stations in markets of all sizes to form more efficient and viable ownership arrangements, including duopolies. The Commission itself concluded in 2003 that the ability of local stations to compete in the video marketplace had been "meaningfully" and "negatively" affected in mid-sized and smaller markets. Reform is all the more necessary because the duopoly rule still in effect – which prohibits any duopolies in most television markets – was found to be arbitrary and capricious by the District of Columbia Circuit Court of Appeals in 2002.

The NAB and the Commission share the common goal of promoting consumers' access to free, over-the-air television and radio, including costly programming such as local news. Expeditious reform of the newspaper/broadcast cross-ownership and television duopoly rules is urgently needed to achieve this goal. NAB looks forward to working with you, your fellow Commissioners, and FCC staff in this necessary reform of the broadcast-only local ownership rules. Please let us know what we can do to help move these two important policy issues forward.

Best wishes.

Sincerely,

David K. Rehr